

Lebowitz



**Comptroller General
of the United States**

230224

Washington, D.C. 20548

Decision

Matter of: Imperial Oil Company, Inc.

File: B-256593.2; B-256608.2

Date: April 26, 1994

DECISION

Imperial Oil Company, Inc. protests the awards of contracts to Valvoline, Inc., a subsidiary of Ashland Oil Inc., under requests for proposals (RFP) Nos. SPO451-94-R-0917 (RFP-0917), issued on December 30, 1993, and SPO451-94-R-0532 (RFP-0532), issued on December 23, 1993, by the Defense General Supply Center, Defense Logistics Agency, for stated incremental quantities of 10W engine lubricating oil. The closing date for RFP-0917 was February 1, 1994, and the closing date for RFP-0532 was February 4, 1994. Both RFPs (in Section B, bid schedule) required that an offeror's product be approved in accordance with military specification No. MIL-L-2104E, dated August 1, 1988, and amended May 26, 1989, and appear on the qualified products list (QPL) in order for the offeror to be eligible for award.

The record shows that in March 1992, MIL-L-2104E was superseded by military specification No. MIL-L-2104F. At the time of these procurements, the protester did not have a product on the QPL under MIL-L-2104E, but was in the process of having its product qualified under MIL-L-2104F. The protester timely submitted offers under the above-referenced RFPs based on a product to be qualified under MIL-L-2104F. Several other firms, including Valvoline, also submitted offers under both RFPs. On February 24, 1994, for RFP-0917, and on February 28, 1994, for RFP-0532, and in accordance with the terms of the RFPs, the agency awarded contracts to Valvoline, the only firm with a product on the QPL under MIL-L-2104E. Following the denial of its agency-level protests, the protester filed these protests challenging the awards to Valvoline.

The protester essentially contends that the agency made improper awards to Valvoline, the only firm with a product on the QPL under MIL-L-2104E. In this regard, the protester

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maintains that the agency should have extended the closing dates for submission of initial offers until its product and the products of other firms received approval, which it states was imminent, for inclusion on the QPL under MIL-L-2104F, the most current military specification.¹ The protester believes that the awards should have been made to the offeror which had a product on the QPL under MIL-L-2104F.

The issue raised in these protests is basically identical to the issue raised in South Coast Terminals, Inc., B-256593; B-256608, Apr. 4, 1994, concerning awards under the above-referenced RFPs for a product on the QPL under MIL-L-2104E, instead of MIL-L-2104F. In that decision, we stated that under our Bid Protest Regulations, protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals must be filed prior to the closing time. 4 C.F.R. § 21.2(a)(1) (1993); Engelhard Corp., B-237824, Mar. 23, 1990, 90-1 CPD ¶ 324. We stated that the RFPs (in Section B, bid schedule) clearly required that an offeror's product comply with MIL-L-2104E and be included on the QPL. We concluded that since the protester in South Coast believed that the RFPs should have required product compliance under MIL-L-2104F, instead of MIL-L-2104E, in order for an offeror to be eligible for award, that it should have protested this matter prior to the February 1994 closing dates. We held that the protester's post-award protests concerning the military specification included in the RFPs were clearly untimely.²

In that decision, we also pointed out that consistent with the terms of the RFPs, the agency properly made the awards to Valvoline, the only firm which had a product on the QPL under MIL-L-2104E.³ Although the protester in South Coast

¹The protester's product did not receive approval for inclusion on the QPL under MIL-L-2104F until after the awards were made to Valvoline.

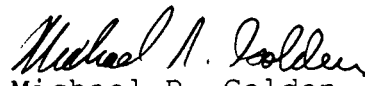
²Pursuant to the Competition in Contracting Act of 1984, 31 U.S.C. § 3553(d)(2) (1988), the agency made the determinations that urgent and compelling circumstances significantly affecting the interests of the United States mandated the continuation of contract performance notwithstanding South Coast's protests which were filed in early March 1994.

³The record showed that during the transition from MIL-L-2104E to MIL-L-2104F, Valvoline was the only firm which took any affirmative steps to ensure that its product remained
(continued...)

believed that it should have been awarded the contracts since its product received approval under MIL-L-2104F, the most current military specification, any awards to an offeror with a product complying with MIL-L-2104F, instead of MIL-L-2104E, would have been inconsistent with the terms of the RFPs.

Since the issue raised and the argument made by the protester in these protests is the same as in the earlier protests which were resolved by our decision of April 4, we see no useful purpose to be served by our further consideration of these protests. Nova Group, Inc., B-245333, Dec. 20, 1991, 91-2 CPD ¶ 568.⁴

The protests are dismissed.


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³(...continued)

qualified under MIL-L-2104E and on the QPL. In this regard, Valvoline had a product listed on the QPL under MIL-L-2104E for which the manufacturing/refining process changed. The agency waived the product retesting requirement in order to keep Valvoline's currently qualified product on the QPL. There was no evidence in the record that the agency acted in a discriminatory manner in granting the waiver to Valvoline so that its product could remain on the QPL under MIL-L-2104E, while not giving the same opportunity to other firms.

⁴To the extent the protester separately argues that the closing dates for submission of initial offers should have been extended until approvals under MIL-L-2104F were granted, this issue involves an alleged solicitation impropriety which also was not timely raised by the protester.